92-1208

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

ARNOLD L. BEIZER,

Petitioner,

v.

MICHAEL GEOPFERT ET AL.,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE
STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI
ARNOLD L. BEIZER, PRO SE APPELLANT

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A. QUESTIONS PRESENTED FOR REVIEW

1. Did the Appellate Court of the State of Connecticut, by its decision against the Plaintiff on August 18, 1992, deny the Plaintiff his right to a jury trial?

2. Did the Superior Court of the Judicial District of Hartford/New Britain, State of Connecticut by referring the Plaintiff's claims to a fact-finder, deny the Plaintiff his right to a jury trial?

B. LIST OF ALL PARTIES TO THE PROCEEDING

1. Arnold L. Beizer - Plaintiff - Appellant
   429 Capitol Avenue, Hartford, Ct 06106

2. Michael Goepfert, Defendant - Appellee
   37 Ruops Road, Tolland, Ct 06084

3. Neil Johnson - Defendant - Appellee
   250 Hudson Street
   Hartford, CT 06106

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2. Palmer v. United States, 652 F2d 893 (9th Cir. 1981)

E. OFFICIAL AND UNOFFICIAL REQUESTS OF OPINIONS

1. June 13, 1991. Recommendation of fact-finder (unreported)

2. Arnold L. Beizer v. Michael Goepfert, Arnold L. Beizer v. Michael Geopfert et al, 28 Conn. App. 693; Connecticut Law Journal (August 18, 1992), 83A.

F. GROUNDS ON WHICH JURISDICTION INVOKED

1. August 18, 1992, decision of Appellate Court published.

2. September 25, 1992 Plaintiff's petition of certification to the Supreme Court of the State of Connecticut, denied.

3. Supreme Court Rules, Rule 10 (c)

G. CONSTITUTIONAL PROVISIONS AND STATUTES

1. United States Constitution, Fourteenth Amendment (see Appendix).

2. Constitution of the State of Connecticut, Article I, Section 19 (see Appendix).

3. Connecticut General Statutes, Section 52-549n (see Appendix).

H. CONCISE STATEMENT OF THE CASE

In December of 1986 the plaintiff hired as an associate attorney and employee in his office the defendant, Neil Johnson. In the last week of December 1986, Johnson brought into the office a third party personal injury action on behalf of the Defendant, Goepfert. Goepfert and Johnson were childhood friends, and in the summer of 1986 Johnston had orally agreed to represent Goepfert for a 10% contingency fee. The Plaintiff always utilized a one-third fee agreement and had not authorized any reduction or alteration in his fee agreement for Goepfert, whose case Johnson did not even discuss with Beizer before bringing it in. Attorney Johnson had been instructed by Attorney Beizer, and understood that all cases became the business of Attorney Beizer, that Attorney Johnson was an employee of Attorney Beizer's, and was not entitled to any fee splitting or sharing. Over the

Christmas vacation of 1986, and while Attorney Beizer was out of state, Johnson had Goepfert come into the office to sign the standard one-third fee agreement form. The case settled in September 1987, and shortly after that time Attorney Johnson was terminated from his employ with Attorney Beizer. It was at this point that Johnson and Goepfert conspired to alter the fee agreement, striking out the material term "one-third" and substituting one tenth.

The plaintiff thereafter filed two suits in Hartford Superior Court. The first, against Goepfert only, sounded in breach of contract and quantum meruit. The second, against Goepfert and Johnson, sounded in tort: conspiracy to defraud and tortious interference with a contract.

Sometime prior to December 7, 1990 the Superior Court referred these matters to a fact-finder, pursuant to C.G.S. Sec. 52-549n.

Pleadings had only been closed as of December 4, 1990 which, Plaintiff later argued, thus rendered the referral in violation of the statute. Hearings were nevertheless held before the fact-finder, who on June 13, 1991 issued his recommendations, finding in defendants' favor. Despite plaintiff's objection, the Court accepted the fact-finder's recommendation on July 8, 1991. Plaintiff initiated his appeal thereafter.

I. STATEMENT AS TO WHEN FEDERAL QUESTIONS RAISED

In the plaintiff's original petition for appeal of August 1, 1991, the violation of the Plaintiff's right to a trial by jury, under both the Federal and State Constitution, was raised in the "Preliminary Statement of Issues".

Further, in his brief as appellant, again in the "Statement of the Issues", issue number two read "Was the Plaintiff's constitutional right to trial by jury violated by the improper referral of these matters to a fact-finder?

In passing on the above issue, the Appellate Court ruled as follows:

1) the plaintiff failed properly to claim this matter for jury trial, by not filing a jury docket claim slip.

2. The plaintiff waived his right to object to the court's referral of the case to a fact-finder, by not raising his objection before hearing began; and

3. That the plaintiff's constitutional right to jury trial was not violated, as the state's statutory requirements for requesting a trial by jury had not fully been met, and were reasonable requirements. (Beizer v. Goepfert supra, 702-704.

J. ARGUMENT FOR ALLOWANCE OF WRIT

Under Rule 10(c) of the Supreme Court Rules, a petition for writ of certiorari may be allowed "when a state court... has decided an important question of federal law which has not been, but should be settled by this Court." All referrals of cases by the Superior Courts of the State of Connecticut to fact-finders are creatures of statute, specifically of C.G.S. Section 52-549n, and thus the language of that statute should govern, and should be construed narrowly. Since, ipso facto, any such referral to a fact-finder involves the denial to all parties of a jury trial. Federal questions as to whether the right to jury trial has been protected are automatically raised, and thus the statutory requirements must be enforced and construed more strictly still.

Here, the statute requires a pertinent

part that "such cases may be returned to a fact-finder only after the pleadings have been closed... and the time prescribed in Section 52-215 for filing a jury trial claim within thirty days of the return day or within ten days after the issue of fact has been joined has expired." The use of the word "only" is a clear indication as to the mandatory nature of this language. Issues were not joined, and pleadings were not closed, until December 4, 1990, when plaintiff answered the defendants' counterclaim. While the first hearing before the fact-finder occurred three days later, on December 7, 1990, the referral itself must have occurred prior to December 4, 1990. Thus, the referral was clearly made in violation of the statute's requirements which the appellant would argue further, were designed to protect the parties' rights to a jury trial. As to the issue of whether, by the Plaintiff's failing to object to the

referral, he had waived his right to jury trial, the Plaintiff refers this Court to the decisions reached in the cases of Gargiulo v. Delsole, 769 F2d 77, 77 (1985) and Palmer v. United States 652 F2d 893, 896 (9th Cir. 1981). In Gargiulo, the lower court had found that "both parties could have refused to go to trial without a jury and walked out of the court without let or hindrance with their witnesses, but they did not. Nor did either complain of the jury's absence in their briefs after trial." In overturning the lower court, the Federal Appellate Court cited Palmer for the proposition that "[A] party's acquiescence to the District Court's maintenance of a bench trial, without more, is insufficient to establish a withdrawal of a jury claim.

Plaintiff would add that the court's referral of this matter to a fact-finder, which resulted in the denial of the Plaintiff's right to a jury trial, was

improper on yet a second basis. Section 52-549n speaks only of "contract" actions as being referrable, and clearly the Superior Court would have lacked subject matter jurisdiction to refer any matter to a fact finder which it had not been to empowered to do by this very statute. Plaintiff argued, forcefully and repeatedly on appeal, that, while his "fee agreement" contract formed the factual underpinning of his two actions brought against the Defendants, the cases sounded largely though not exclusively in tort. In ruling against the plaintiff, the appellate court acknowledged that the cases sounded in tort, and acknowleged as well that cases in tort were not referrable to a fact-finder, but asserted nonetheless that the referral here was proper because the tort and contract claims were "intertwined" Goepfert, supra, 701-702. Plaintiff argues that this statute must be construed strictly, and does

not allow for the "intertwining", standard entertained by the appellate court.

Plaintiff would lastly argue that the fact-finder himself made recommendations in this matter which went against the weight of the evidence presented to him. This was argued to the appellate court, which conducted no review of the evidence whatsoever.

K. APPENDIX

1. United States Constitution, Fourteenth Amendment

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction equal protection of the law.

2. Constitution of the State of Connecticut, Article I Section 19:

The right of trial by jury shall remain inviolate

and the time prescribed in section 52-215 for filing a jury trial claim within thirty days of the return day or within ten days after the issue of fact has been joined has expired.

PLAINTIFF, Pro Se

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ARNOLD L. BEIZER *v.* MICHAEL GOEPFERT

ARNOLD L. BEIZER *v.* MICHAEL GOEPFERT ET AL. (10504)

DALY, FREEDMAN and CRETELLA, Js.

The plaintiff attorney sought, in the first action, to recover legal fees allegedly owed to his firm by the defendant G. He also sought damages from J, the member of the firm who had represented G, alleging that J had changed the firm's contingency fee agreement without authority. In the second case, the plaintiff sought to recover from J for breach of J's employment contract and for tortious interference with the contract between G and the firm, and from both G and J for fraud. G filed a counterclaim against the plaintiff alleging breach of contract and wrongful refusal to pay him the disputed portion of the settlement of his case. The matters were consolidated and referred to an attorney factfinder, who found that the plaintiff had failed to meet his burden of proof in both actions. The trial court rendered judgment in accordance with the factfinder's report in favor of the defendants in both actions and in favor of G on the count of his counterclaim alleging breach of contract. The plaintiff appealed to this court claiming, inter alia, that the referral to the attorney factfinder was improper because the statute (§ 52-549n) authorizing referral to an attorney factfinder is applicable to actions sounding exclusively in contract and the actions here involved tort claims. He further claimed that referral was improper because he had requested a jury trial. *Held:*

1. The matter was properly referred to the factfinder; each claim here was a contract claim or intertwined with a contract so as to be included within the meaning of the phrase "any contract action" in § 52-549n, the plaintiff failed to file a proper claim for a jury trial and the plaintiff waived his right to challenge the referral by failing to raise his objections prior to the hearing before the factfinder.
2. The plaintiff, having failed to follow the proper procedures for placing a case on the jury docket, could not prevail on his claim that the referral to the factfinder violated his state constitutional right to a jury trial.
3. The plaintiff failed to establish that the factual findings supporting the factfinder's recommendations were clearly erroneous; the fact that some of the plaintiff's evidence was not controverted did not require the factfinder to accept it as fact.
4. The plaintiff could not prevail on his claim that because neither the factfinder nor the trial court had transcripts of the hearings available in making their decisions, the judgment could not stand; there is no rule requiring the availability of transcripts, and, had the plaintiff thought that they were essential, he should have submitted them to the trial court.

Argued May 7—decision released August 18, 1992

Action, in the first case, to recover payment for legal services rendered to the defendant, and action, in the second case, to recover damages for, inter alia, tortious interference with a contract, brought to the Superior Court in the judicial district of Hartford-New Britain at Hartford, where the named defendant filed a counterclaim; thereafter, the cases were consolidated and referred to *Stephen B. Delaney,* attorney factfinder, who recommended judgment for the defendants on the complaints and for the named defendant on the counterclaim; subsequently, the court, *Stengel, J.,* rendered judgment in accordance with the referee's report, from which the plaintiff appealed to this court. *Affirmed.*

Mark R. Leder, for the appellant (plaintiff).

James F. Aspell, for the appellee (named defendant in each case).

Neil Johnson, pro se, the appellee (defendant in the second case).

DALY, J. The plaintiff appeals from the trial court's judgment in favor of the defendants, Michael Goepfert and his attorney, Neil Johnson, rendered in accordance with the report of an attorney factfinder. The plaintiff claims that the trial court improperly (1) referred these matters to an attorney factfinder, (2) denied his right to a trial by jury, (3) rendered judgment because the evidence was insufficient to support a judgment for the defendants, and, (4) rendered judgment without the benefit of the transcript from the proceedings before the attorney factfinder. We affirm the judgment of the trial court.

The following facts are relevant to this appeal. On July 4, 1986, Goepfert entered into an oral agreement for professional services with his friend, Johnson, an attorney, to handle Goepfert's personal injury claim

against the town of Tolland on a 10 percent contingency fee. At the time of the agreement, Johnson was an associate for the law firm of Teitenberg and Wallace.

In December, 1986, Johnson began working for the plaintiff's law firm. On December 31, 1986, the defendants, Michael Goepfert and Neil Johnson, signed a professional services agreement between themselves using a standard form contract supplied by the plaintiff's law firm. Johnson crossed out the 33⅓ percent contingent fee figure in the plaintiff's standard form professional services contract and inserted the 10 percent figure previously agreed to in July. In August, 1987, Goepfert's case was settled for $34,000 by Johnson with guidance from the plaintiff as to the proper settlement figure. Goepfert agreed to pay the 10 percent fee set forth in the contract, but refused to pay the plaintiff's standard fee of 33⅓ percent. The plaintiff withheld his standard fee and brought suit claiming he was entitled to the full 33⅓ percent.

On August 18, 1988, the plaintiff instituted a two count action against Goepfert seeking an award of the 33⅓ percent fee for services rendered on the settlement of Goepfert's personal injury claim. The first count was based on breach of contract and the second count was based on quantum meruit. This complaint was signed by the plaintiff. The plaintiff filed an amended complaint dated December 30, 1988, adding Johnson to the action. The plaintiff's amended complaint alleged that Johnson changed the contingency fee agreement without authority. This amended complaint was signed by Martin B. Krulewitz, an associate of the plaintiff's law firm.

On July 28, 1989, the plaintiff commenced a second action asserting that the defendants conspired to defraud the plaintiff and that the defendant Johnson breached his employment contract and tortiously inter-

fered with the contract relationship between the plaintiff and Goepfert. Goepfert filed a counterclaim against the plaintiff alleging breach of contract and wrongful refusal to pay him the disputed 23⅓ percent of the $34,000. On February 27, 1989, the plaintiff claimed the first action for the trial list as a nonjury matter. The plaintiff claimed the second action for the trial list on November 20, 1990, and identified this action as a jury matter on the claim for the trial list. Neither party filed a jury docket claim slip pursuant to General Statutes § 52-215[1] nor did either party pay the $100 jury fee required by General Statutes § 52-258.[2] The case was never placed on the jury docket.

The pleadings were subsequently closed. On February 20, 1990, the trial court granted the plaintiff's motion to consolidate both matters. The matters were referred to an attorney factfinder, Stephen B. Delaney. There were no objections to the referral of this matter.

The factfinder found that the plaintiff failed to meet his burden of proof in both actions. He recommended that judgment be rendered for the defendants on both actions and in favor of the named defendant on count one of the counterclaim, which sounded in breach of contract and was based on the plaintiff's wrongfully holding onto the disputed portion of the settlement. The plaintiff filed objections to the factfinder's findings and the objections were overruled by the trial court. The trial court rendered judgment in favor of the defend-

[1] General Statutes § 52-215 provides in pertinent part: "The following-named classes of cases shall be entered in the docket as jury cases *upon the written request of either party made to the clerk within thirty days after the return day* . . . ." (Emphasis added.)

[2] "[General Statutes] Sec. 52-258. JURY FEES. "The jury fee in civil actions shall be one hundred dollars to be paid at the time the case is claimed for the jury by the party at whose request the case is placed upon the jury docket. The jury fee shall be taxed in favor of the party paying the jury fee in the bill of costs in the action, if final judgment thereon is rendered in his favor."

ants on the complaint and awarded Goepfert $7933 plus costs on the counterclaim. The plaintiff appealed.

I

The plaintiff claims that these matters should not have been referred to an attorney factfinder because the requirements of General Statutes § 52-549n were not satisfied.[3] Specifically, the plaintiff argues that the Superior Court lacked subject matter jurisdiction to refer the case to an attorney factfinder because these matters involved tort claims and did not exclusively sound in contract. The plaintiff further contends that that referral was improper because he requested a jury trial.

A claim that the court lacks subject matter jurisdiction cannot be waived. *Seal Audio, Inc.* v. *Bozak, Inc.*, 199 Conn. 496, 499, 508 A.2d 415 (1986). "A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it." *Monroe* v. *Monroe*, 177 Conn. 173, 185, 413 A.2d 819, appeal dismissed, 444 U.S. 801, 100 S. Ct. 20, 62 L. Ed 2d 14 (1979). We find that in this case the trial court's referral of this matter to an attorney factfinder was proper because the requirements of General Statutes § 52-549n were satisfied.

The phrase "any contract action" in § 52-549n does not require that every claim in a case be a purely con-

[3] General Statutes § 52-549n provides in pertinent part that "the court, in its discretion, may refer to a fact-finder for proceedings authorized pursuant to this chapter, any contract action pending in the superior court in which only money damages are claimed and which is based upon an express or implied promise to pay a definite sum, and in which the amount, legal interest or property in demand is less than fifteen thousand dollars exclusive of interest and costs. Such cases may be referred to a fact-finder only after the pleadings have been closed, a trial list claim has been filed, no claim for a jury trial has been filed at the time of reference, and the time prescribed in section 52-215 for filing a jury trial claim within thirty days of the return day or within ten days after the issue of fact has been joined has expired." See also Practice Book § 546D.

tractual action, as the plaintiff contends. Section 52-549n allows "any contract action" to be referred to a factfinder if only money damages are claimed and if the amount in controversy does not exceed $15,000. "The objective of statutory construction is to give effect to the intended purpose of the legislature." *State* v. *Delafose,* 185 Conn. 517, 521, 441 A.2d 158 (1981). " 'When the language of the statute is plain and unambiguous, we need look no further than the words themselves because we assume that the language expresses the legislature's intent.' " *Winslow* v. *Lewis-Shepard, Inc.*, 216 Conn. 533, 538, 582 A.2d 1174 (1990), quoting *State* v. *White,* 204 Conn 410, 421, 528 A.2d 811 (1987). Where the language is ambiguous " 'this court is to be guided by the language, purpose and legislative history of the statute in question.' " *Jutkowitz* v. *Department of Health Services,* 220 Conn. 86, 102, 596 A.2d 374 (1991), quoting *Zichichi* v. *Middlesex Memorial Hospital,* 204 Conn. 399, 405, 528 A.2d 805 (1987). The meaning of "any contract action" as used in this statute is not specifically defined.

The legislative history sheds no light on the intended construction of the phrase "any contract action." According to the statement of purpose of Public Acts 1982, No. 82-441, which became General Statutes §§ 52-549n through 52-549aa and which deals with both factfinders and arbitrators, the statute is intended "[t]o establish, in an effort to reduce the pending civil caseload, a system of fact-finders for certain non-jury cases and a system of arbitration for jury cases . . . ." The statute was adopted to ease the backlog of cases with which the judiciary is plagued. 25 H.R. Proc., Pt. 24, 1982 Sess., p. 7665, remarks of Rep. Richard D. Tulisano. This does not lend itself to a narrow construction of the phrase "any contract action." The legislature intended to free the judiciary from the factfinding

tasks in simpler, nonjury cases involving $15,000 or less. This indicates that the legislature preferred to include rather than to exclude cases.

The phrase "any contract action" also lends itself to a broad construction of what claims are included. "Any contract action" can be contrasted with "only contract actions." The former is much less restrictive. "Any" is defined as "one or some of whatever kind or sort . . . one or some however imperfect used as a function word to indicate one that is selected with indifference to quality." Webster, Third International Dictionary. On the other hand, "only" is defined as "a single solitary fact or instance or occurrence: as just the one simple thing and nothing more or different: simply, merely, just." Id. "Any contract action" implies a broad concept of what constitutes a contract action. Furthermore, there is no language in the statute that limits "any contract action" to claims sounding exclusively in contract.

There are no other statutes that restrict the meaning of "any contract action" under § 52-549n. Section 52-549n does provide for arbitration in "any civil action in which the amount, legal interest or property in demand is less than fifteen thousand dollars exclusive of interest and costs and in which a claim for trial by jury and a claim for the trial list have been filed." This statute provides greater jurisdiction to the arbitrator than the factfinder in that an arbitrator may hear "all *civil* actions," but it does not limit the language "any contract action" of § 52-549n to purely contractual cases. Given the purpose of § 52-549n and the meaning of "any contract action," this statute does not necessarily exclude cases with a mixture of claims based in contract and tort.

We now consider whether the claims in this case were contractual in nature. In *J. Dunn & Sons, Inc.* v. *Para-*

gon Homes of New England, 110 N.H. 215, 265 A.2d 5 (1970), the New Hampshire Supreme Court set forth the considerations for determining the nature of a claim. In *J. Dunn & Sons, Inc.,* the court examined whether the pleadings sounded in contract for purposes of deciding if an arbitration clause was applicable to the dispute. The New Hampshire Supreme Court presented the following considerations for determining the classification of a claim which may be of assistance in the context of § 52-549n: "The source or origin of the duty alleged to have been violated; the nature of the grievance; the character of the remedy such facts indicate; [and] the type of damages sought." Id., 217, citing 1 Am. Jur. 2d Actions § 8. "The purpose of the contract duty is to secure the receipt of the thing bargained for, while the tort duty which results from the contract relation of the parties is that a party must refrain from conducting itself so as to cause a particular harm to another party." Id., 217–18, citing 1 Restatement (Second), Torts § 4, comment c. We shall determine the nature of the present case on the basis of these factors.

All of the plaintiff's claims are based on the professional services contract signed by Johnson and Goepfert and on Johnson's employment contract with the plaintiff. The facts alleged in both complaints involved the creation and alteration of the fee agreement and the authority of Johnson under his employment agreement. In both complaints, the plaintiff sought damages in the amount of the difference between the 33⅓ percent contingent fee and the 10 percent fee provided for in the altered contract. These damages "secure the receipt of the thing bargained for." Id. These factors indicate that all of the claims involved in the present case are contractual in nature.

As to the specific claims, the allegations that Goepfert breached the professional services agreement and

that Johnson breached his employment contract are both contract claims. The claim for recovery in quantum meruit for the value of the work performed is contractual in nature and this is not disputed by the plaintiff. The plaintiff also does not dispute that Goepfert's counterclaim sounded in contract.

The plaintiff contends that the tortious interference with a contract relationship and the conspiracy to defraud claims, set forth in the complaint in the second suit, are tort claims. Both claims are basically contract actions despite the fact that the plaintiff encoded the second suit as sounding in tort. This court has held that the coding of an action does not determine the basis of the claim for purposes of § 52-549n. *McKeever* v. *Von Reiter,* 15 Conn. App. 194, 196, 544 A.2d 242 (1988).

"The elements of tortious interference are the existence of a contractual or beneficial relationship, the defendant's knowledge of that relationship, the intent to interfere with it and the consequent actual loss suffered by the plaintiff." *Hart, Nininger & Campbell Associates, Inc.* v. *Rogers,* 16 Conn. App. 619, 629, 548 A.2d 758 (1988). The contractual relationship between the plaintiff and Goepfert is central to this claim. The pleadings in support of this claim put forward facts related to the creation of the professional services contract and pray for compensatory damages in the amount of the difference between the disputed fees. This claim is a contract claim for purposes of § 52-549n.

The plaintiff's allegations with respect to the claim that the defendants conspired to defraud the plaintiff out of the fee set forth in his standard form contract are also contractual in nature for purposes of § 52-549n. This claim has been categorized by our Supreme Court as a tort claim. *Rosenblatt* v. *Berman,* 143 Conn 31, 39, 119 A.2d 118 (1955). As previously discussed, how-

ever, under § 52-549n a case need not sound exclusively in contract. This claim is so intertwined with the contract that it falls under "any contract action" of § 52-549n. The professional service contract was the vehicle of the alleged conspiracy to defraud. The plaintiff alleged that the defendants agreed to alter the contract after its execution to deprive the plaintiff of the full fee. The creation and alteration of the professional services contract is at the heart of the alleged conspiracy to defraud. Even though conspiracy to defraud is generally classified as a tort claim, it is a contract claim under § 52-549 because the conspiracy to defraud in this case was so intertwined with the formation, execution, and breach of the professional services contract.

The plaintiff next contends that the trial court lacked subject matter jurisdiction because he claimed the case for jury trial. The plaintiff, however, failed to claim this matter properly for jury trial. First, he failed to file a jury docket claim slip as required by § 52-215. Second, he failed to pay the jury fee of $100 as required by § 52-258. The fact that the plaintiff indicated on the claim slip for the trial list, filed on November 20, 1990, that the second action was a jury matter does not excuse the plaintiff's violation of the requirements for a jury trial. Because no claim for a jury trial was properly filed by the plaintiff, the referral by the trial court to the factfinder was within its authority.[4] Thus, the

[4] The plaintiff claims that he had no opportunity to appeal from the factfinder's determinations. It is important to note that the plaintiff exercised his right to object to the factfinder's determinations under Practice Book § 546H. "A party may file objections to the acceptance of a finding of facts on the ground that conclusions of fact stated in it were not properly reached on the basis of the subordinate facts found, or that the fact-finder erred in rulings on evidence or in other rulings, or that there are other reasons why the finding of facts should not be accepted.

"Objections must be filed within fourteen days after the filing of the finding of facts." Practice Book § 546H.

The plaintiff filed his objections and the trial court overruled them.

referral of this matter did not implicate the subject matter jurisdiction of the trial court because it was properly referred under § 52-549n.

We will now consider whether the plaintiff waived his right to object to the referral of his case after the factfinder made his findings. Both the plaintiff and the defendants consented to the referral of this matter to an attorney factfinder. Before the trial court referred this case to the attorney factfinder, the plaintiff knew of the facts on which his objections are now based. The appropriate time for the plaintiff to challenge the referral by the trial court would have been, at the latest, before the attorney factfinder began hearing the case. *Bowman* v. *1477 Central Avenue Apartments*, 203 Conn. 246, 251, 524 A.2d 610 (1987). As our Supreme Court explained in *Bowman*, there is a strong policy behind this requirement. It discourages litigants from reserving their objections to attack an unfavorable outcome. Id., 251–52. Thus, the plaintiff waived his right to challenge the referral of this matter to an attorney factfinder by not raising these objections before the commencement of the hearing.

II

The plaintiff further claims that the trial court's referral violated his right to trial by jury according to article IV of the amendments to the constitution of Connecticut. Article IV provides that the "right of a trial by jury shall remain inviolate." "Litigants in a civil case have a constitutional right to have a question of fact decided by a jury." *Speed* v. *DeLibero*, 19 Conn. App. 95, 104, 561 A.2d 959 (1989), rev'd on other grounds, 215 Conn. 308, 575 A.2d 1021 (1990). "Nevertheless, such a right may be subjected to reasonable conditions and regulations." *Shelby Mutual Ins. Co.* v. *Bishop, Kirk & Saunders, Inc.*, 13 Conn. App. 189, 192, 535 A.2d 387 (1988).

As discussed previously, the plaintiff failed to follow the statutory requirements for placing a case on the jury docket. Our Supreme Court has determined that the requirements for requesting a trial by jury do not deprive the parties of their right to a jury trial and they do not "impose any arbitrary or unreasonable requirements upon one who desires such a trial." *Leahey* v. *Heasley*, 127 Conn. 332, 336, 16 A.2d 609 (1940). Therefore, because the requirements of §§ 52-215 and 52-258 have not been satisfied, the plaintiff has not been denied his right to a jury trial because of the referral of this matter to an attorney fact-finder.[5]

III

The plaintiff next claims that there was insufficient evidence to support the conclusions of the factfinder on which the trial court rendered judgment for the defendants. The plaintiff argues that the trial court's findings involving the validity and enforceability of the written agreement were improper.

A challenge to the trial court's factual findings requires that the plaintiff establish that the factual findings were clearly erroneous. Practice Book § 4061; *Cashman* v. *Calvo*, 196 Conn. 509, 516, 493 A.2d 891 (1985). " 'A finding is "clearly erroneous" when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.' " *Doyle* v. *Kulesza*, 197 Conn. 101, 105, 495 A.2d 1074 (1985), quoting *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 92 L. Ed. 746 (1948). Great deference is given to the trial court's findings because the trial court is responsible for weighing the evidence and determining the credibility of

[5] Because the plaintiff did not properly request a jury trial in the first place, we need not reach the question of whether he waived his right to a jury trial.

witnesses. *Inland Wetlands & Watercourses Agency* v. *Landmark Investment Group, Inc.*, 218 Conn. 703, 708, 590 A.2d 968 (1991).

The plaintiff disputes the factfinder's conclusion "[t]hat on December 31, 1986, in compliance with state statute, the defendants, Neil Johnson and Michael Goepfert, memorialized their agreement pertaining to the 10 percent contingency fee." There is sufficient evidence to support all of the trial court's conclusions as well as this finding of fact. The testimony of Johnson and Goepfert, though not uncontradicted, showed that the defendants, who were friends, entered into an oral agreement in July, 1986, whereby Johnson would represent Goepfert for a 10 percent contingency fee. Johnson testified that he had understood it to be a normal practice for attorneys to charge lower fees to relatives and friends, such as Goepfert.

During the interim between the oral contract and the signing of the standard form contract, the legislature enacted § 52-531c which required that all contingent fee agreements be reduced to writing. This agreement was reduced to writing on December 31, 1986, after Johnson's employment with Beizer commenced. Both defendants testified that before signing the standard form professional services agreement, Johnson changed the fee clause to provide for a 10 percent fee. Finally, the professional services contract signed by both defendants that had been altered to provide for a 10 percent fee was in evidence. It is reasonable, given this evidence, to conclude that the written contract was merely a memorialization of the original, oral professional services contract and, because of this, the 10 percent contingency fee was valid. Therefore, the factual findings as adopted by the trial court were not clearly erroneous.

The plaintiff also contends that the attorney factfinder did not properly consider the credibility of the

witnesses in determining his findings. The plaintiff asserts that the testimony of his witness, a friend of the plaintiff who practiced law in the same building as the plaintiff, was credible and that the factfinder should have believed him. He contends that Johnson's testimony was not credible and indicates that, as such, the factfinder should not have relied on it. The plaintiff seeks to have this court determine the credibility of the witnesses. We will not retry the facts or assess the credibility of the witnesses in this case. *Eslami* v. *Eslami,* 218 Conn. 801, 808, 591 A.2d 411 (1991); *Sippin* v. *Ellam,* 24 Conn. App. 385, 388, 588 A.2d 660 (1991). The finder of fact is in a better position to determine the credibility of witnesses and the weight to be accorded their testimony. *Oak Leaf Marina, Inc.* v. *Ertel,* 23 Conn. App. 91, 94, 579 A.2d 568, cert. denied, 216 Conn. 827, 582 A.2d 206 (1990); B. Holden & J. Daly, Connecticut Evidence § 125a. The trial court is not bound by the uncontradicted testimony of any witness. *Bieluch* v. *Bieluch,* 199 Conn. 550, 556, 509 A.2d 8 (1986); *Johnson* v. *Fuller,* 190 Conn. 552, 556, 461 A.2d 988 (1983). The fact that some of the statements by the plaintiff's witnesses remained uncontroverted does not mean that the trier of fact was required to accept that testimony. The factfinder's conclusions were based on sufficient evidence and were not clearly erroneous.

IV

The plaintiff next claims that because neither the attorney factfinder nor the trial court had the trial transcripts when making their determinations the judgment cannot stand. We disagree.

There is no rule requiring the factfinder or the trial court reviewing the factfinder's report to order a transcript. In *Wilcox Trucking, Inc.* v. *Mansour Builders, Inc.,* 20 Conn. App. 420, 567 A.2d 1250 (1989), cert.

denied, 214 Conn. 804, 573 A.2d 318 (1990), pursuant to Practice Book § 546J,[6] the trial court ordered the defendant, who had objected to the findings of the fact-finder, to provide the transcripts before the court made its decision to reject the determinations of the fact-finder. Thus, a trial court may ask that transcripts be provided, but there is nothing that requires that the trial court have the transcripts before rendering judgment.

The plaintiff failed to make the transcripts available to either the factfinder or the trial court even after objecting to the findings of fact. If the plaintiff felt that transcripts were crucial to his objections, he should have submitted them to the trial court. The plaintiff could have but did not ask the trial court to delay its ruling on the objections until the transcript could be obtained. The trial court properly rendered judgment in this case.[7]

The judgment is affirmed.

In this opinion the other judges concurred.

[6] Practice Book § 546J provides in pertinent part: "After review of the finding of facts and hearing on any objections thereto, the court may take the following action: (1) render judgment in accordance with the finding of facts; (2) reject the finding of facts and remand the case to the fact-finder who originally heard the matter for a rehearing on all or part of the finding of facts; (3) reject the finding of facts and remand the matter to another fact-finder for rehearing; (4) reject the finding of facts and revoke the reference; (5) remand the case to the fact-finder who originally heard the matter for a finding on an issue raised in an objection which was not addressed in the original finding of facts; or (6) take any other action the court may deem appropriate."

[7] The defendants claim for the first time on appeal that the plaintiff's complaints are void under Connecticut law because the plaintiff and his employees improperly signed the complaints involved in this matter to which the plaintiff is a party. In *Brunswick* v. *Inland Wetlands Commission*, 222 Conn. 541, A.2d (1992), our Supreme Court decided that because the policy reasons behind this rule no longer exist, an attorney may sign the writ in a case to which he is a party. The Supreme Court's decision controls the disposition of this claim and, therefore, the defendants cannot prevail on it.